92-164

Supreme Court, U.S.
FILED
APR 23 1992
OFFICE OF THE CLERK

NO.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19___

PETER E. HALL,

Petitioner

versus

ISMAEL BETANCOURT LEBRON,
Superintendent of the
Police Department of the
Commonwealth of Puerto Rico,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Question Presented

Whether the District Court abused its discretion when it dismissed without prejudice the civil action set forth in the original Complaint without due consideration of the conditions for such dismissal stated in Plaintiff's Motion for Voluntary Dismissal.

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Table of Authorities

United States Constitution:

Amendment IV.

Statutes:

42 U.S.C. §1983.

28 U.S.C. §1343(a)(3).

Federal Rules of Civil Procedure, Rule 41(a)(2).

Cases:

Carpet Steaming Tape Licensing Corp. v. Best Seams Inc., 616 F.2d 1133 (9th Cir. 1980), cert. denied, 464 U.S. 818 (1983).

Corchado v. Puerto Rico Marine Management, Inc., 665 F.2d 410 (1st Cir. 1981), cert. denied, 459 U.S. 826 (1982).

D.P. Apparel Corporation v. Roadway

Express, Inc., 736 F. 2d 1 (1st Cir. 1984).

Lipsett v. University of Puerto Rico, 864 F.2d 881 (1st Cir. 1988).

Ray v. Foreman, 441 F.2d 1266 (6th Cir. 1971), cert. denied, 405 U.S. 926 (1972).

Stone v. Millstein, 804 F.2d 1434 (9th Cir. 1986).

Taylor v. Combustion Engineering, Inc., 782 F.2d 525 (5th Cir. 1986).

Treatises:

Wright & Miller, Federal Practice and Procedure: Civil §§2361-2376.

Jurisdiction

The judgment sought to be reviewed was entered by the United States Court of Appeals for the First Circuit on January 24, 1992.

The jurisdiction of this Court to review this case is invoked under 28 U.S.C. §1254(1).

Statutes Involved

The constitutional provisions and statutes involved in this case are set forth below:

(a) "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." United States Constitution, Amendment IV.

(b) "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or

Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 42 U.S.C. §1983.

(c) "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: ...To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity

secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States ...." 28 U.S.C. §1343(a)(3).

(d) "...an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper." Federal Rules of Civil Procedure, Rule 41(a)(2).

Statement of Facts

Plaintiff-Petitioner filed the civil action in this case in the United States District Court for the District of Puerto Rico, the court of first instance, on February 12, 1991. The District Court has jurisdiction pursuant to 28 U.S.C. §1343(a)(3) to implement the provisions of 42 U.S.C. §1983.

Plaintiff-Petitioner submitted a Motion for Voluntary Dismissal in this case on June 5, 1991, wherein Plaintiff-Petitioner stated that he was willing to dismiss voluntarily this civil action and did, in fact, request the voluntary dismissal without prejudice of this civil action "provided that and only that Defendant expressly agrees: (a) to revoke the traffic citation referred to in the original Complaint;

and (b) to return to Plaintiff his his driver's license."

The District Court ordered sua sponte the dismissal without prejudice of this civil action on June 24, 1991. The District Court, in its decision of June 24, 1991, did not give any consideration to the conditions for voluntary dismissal stated in Plaintiff-Petitioner's Motion of June 5, 1991. The District Court entered a final judgment in this case on September 13, 1991, wherein it dismissed without prejudice the original Complaint.

Defendant-Respondent submitted a Motion to Dismiss on July 16, 1991, wherein he prayed the District Court to dismiss all claims set forth in the original Complaint. Defendant-Respondent, in his Motion of July 16, 1991, did not give any consideration to the conditions

for voluntary dismissal stated in Plaintiff-Petitioner's Motion of June 5, 1991.

Plaintiff-Petitioner filed his Notice of Appeal in the United States Court of Appeals for the First Circuit on September 25, 1991. Plaintiff-Petitioner submitted a Motion in the Court of Appeals on November 12, 1991, wherein he stated that his Motion for Voluntary Dismissal was prematurely granted by the District Court in its order of June 24, 1991, for the reason that no consideration had been given either by the District Court or Defendant-Respondent to the conditions for voluntary dismissal stated in Plaintiff-Petitioner's Motion of June 5, 1991. The Court of Appeals ordered the dismissal of Plaintiff-Petitioner's appeal in a final judgment entered on

January 24, 1992. The Court of Appeals, as the District Court, did not give any consideration to the conditions for voluntary dismissal originally stated in Plaintiff-Petitioner's Motion submitted to the District Court on June 5, 1991, and re-stated in his Motion submitted to the Court of Appeals on November 12, 1991.

The present Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit presents for review by the Supreme Court of the United States the question whether the District Court, the court of first instance, abused its discretion when it dismissed without prejudice the civil action set forth in the original Complaint without due consideration of the conditions for such dismissal stated in Plaintiff's Motion for

Voluntary Dismissal of June 5, 1991.

Argument

The District Court, in its decision of June 24, 1991, to dismiss without prejudice, abused its discretion. The District Court should have given due consideration to the conditions stated in Plaintiff-Petitioner's Motion for Voluntary Dismissal of June 5, 1991, or, on the other hand, should have denied the Motion altogether, thereby indicating its willingness to hear the evidence in this case.

The District Court's decision of June 24, 1991, is characterized in this Petition for Writ of Certiorari as a dismissal under Rule 41(a)(2) of the Federal Rules of Civil Procedure ("FRCP"). Nevertheless, it may be useful to indicate that FRCP Rule 41(a)(2), rather than FRCP Rule 41(b), applies

to this case only because of the chronology of the pleadings. In its decision of June 24, 1991, the District Court ruled upon Plaintiff-Petitioner's Motion of June 5, 1991. Defendant-Respondent's Motion to Dismiss of July 16, 1991, submitted as it was after the District Court's decision, was moot at the time of its submission.

For the purpose of this argument, Plaintiff-Petitioner contends, however, that the District Court abused its discretion regardless of whether its decision to dismiss without prejudice is viewed as a ruling of voluntary dismissal under FRCP Rule 41(a)(2) or of involuntary dismissal under FRCP Rule 41(b).

If the District Court's decision of June 24, 1991, is viewed as a voluntary dismissal under FRCP Rule 41(a)(2),

the Court rejected a good faith offer of settlement by Plaintiff-Petitioner. Such offers of settlement by use of the motion for voluntary dismissal subject to conditions should be allowed by the Court. Motions for voluntary dismissal subject to conditions are favored, for instance, in Wright & Miller, Civil §2366: "Although the power to set terms and conditions is vested in the court, it has been held that plaintiff may move for dismissal on conditions stated in his motion and that the court must either grant the motion on the conditions offered or deny the motion." If the District Court had found that the conditions stated in Plaintiff-Petitioner's Motion were unreasonable, the Court should have denied the Motion, as suggested by Wright & Miller. The District Court did not,

however, make any finding of reasonableness or unreasonableness, because it failed to give due consideration to the conditions stated in Plaintiff-Petitioner's Motion. The failure of the District Court to give due consideration to these conditions constitutes an abuse of discretion.

If the District Court's decision of June 24, 1991, is viewed as an involuntary dismissal under FRCP Rule 41(b), the same conclusion is reached that the Court abused its discretion. In Taylor v. Combustion Engineering, Inc., 782 F.2d 525 (5th Cir. 1986), for instance, it is stated that "in the interest of obtaining a full and complete picture for both the trial and the appellate court, it may be advisable to deny the defendant's motion, put the defendant to its proof, and

then decide the case when all the evidence has been adduced." 782 F.2d 525, 527. In Stone v. Millstein, 804 F.2d 1434 (9th Cir. 1986), the Court of Appeals emphasizes that a motion for involuntary dismissal under FRCP Rule 41(b) was appropriately granted where "the district court carefully considered the evidence before it and thoroughly questioned counsel." 804 F.2d 1434, 1437. Since the District Court in this case failed to give any consideration at all to the evidence other than that presented by the original Complaint, the District Court would have abused its discretion by ruling to dismiss under FRCP Rule 41(b).

For the reasons set forth above, Plaintiff-Petitioner respectfully submits that regardless of whether the District Court's decision of June 24, 1991, to

dismiss without prejudice is viewed as a ruling of voluntary dismissal under FRCP Rule 41(a)(2) or of involuntary dismissal under FRCP Rule 41(b), the District Court abused its discretion when it dismissed without prejudice the civil action set forth in the original Complaint.

Appendix

Copies of the judgments of the United States Court of Appeals for the First Circuit and of the United States District Court for the District of Puerto Rico sought to be reviewed in this case are attached to this petition below:

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 91-2100

PETER E. HALL,

Plaintiff, Appellant,

v.

ISMAEL BETANCOURT LEBRON,

Defendant, Appellee.

ORDER OF COURT

Entered: January 24, 1992

On January 7, 1992, this Court entered an order denying appellant's

motion for an enlargement of time to file his brief and appendix and ordered further that unless the brief and appendix were filed by January 17, 1992, the appeal would be dismissed for lack of prosecution in accord with Local Rule 45. Appellant having failed to file the brief and appendix,

It is ordered that the above captioned appeal be dismissed for want of prosecution.

By the Court:
FRANCIS P. SCIGLIANO, CLERK.

By_____
Chief Deputy Clerk.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF PUERTO RICO

PETER E. HALL	*	
Plaintiff	*	
vs.	*	CIVIL CASE
ISMAEL BETANCOURT	*	91-1183 (PG)
LEBRON	*	
Defendants	*	

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J U D G M E N T

The Court, through the Honorable Juan M. Perez-Gimenez, has entered an Order granting plaintiff's "Motion for Voluntary Dismissal". WHEREFORE, it is

ORDERED and ADJUDGED that the complaint be and is hereby DISMISSED, without prejudice.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 13th day of September, 1991.

LYDIA PELEGRIN
Clerk of the Court

By:
Lida Isis Egele
Deputy Clerk

s/c: Peter E. Hall
Mabel Ramon Milian (DOJ)
O.B.

Respectfully submitted,

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April 22, 1992